

FAX MEMO

DEPT OF TRANSPORTATION
DOT/ITS

Date: April 14, 2009

To: Office of the Secretary, DOT
Docket number (OST-2009) RIN 2105-AD75Re: Disadvantaged Business Enterprise Program
Potential Program Improvements (Public Comment)From: Marvin Dean, President
Kern Minority & Black Contractors Association

Kern Minority & Black Contractors comment for the public record notice of proposed rulemaking (ANPRM) on five matters of interest to DOT concerning the DBE program.

*** First concern** counting items obtained by DBE subcontractor from its prime contractor.
- After reviewing issue raised in rulemaking discussion, KMBCA would recommend DOT go with **option 1**: No change to section 26.55(a) (1) and concern raised by other DBE & Prime for change be reviewed on a case by case basis in areas where prime contractor may be the only supplier of material to be used on projects being done by DBE Subcontractor & Prime Contractor. This review could allow for a waiver if no other DBE subcontractor or suppliers can be found for other contracting opportunities on these projects. We believe if you allow this arrangement to be widely used by all prime contractors it will create DBE front company and reduce opportunities for new DBE firms to do business with these prime contractors.

*** Second concern** encouraging unbundling of contracts to facilitate participation by SBE / DBE.
- KMBCA for all the reasons mentioned in the rulemaking discussion, and our many years of concern working on this matter support strongly & agree with unbundling large projects. Also find other ways to include smaller DBE on these transportation projects. KMBCA would request DOT encourage prime contractors support one of our recommendations we have been promoting in California to Caltrans that; prime contractors be given a small business 5 % incentive when they meet or exceed the DBE goal using small & micro businesses. Also support prime contractors contracting with experienced **DBE construction management group** for a **scope of work** to bring more smaller DBE to the project where by the construction management team can provide mentoring to help these smaller DBE learn public sector contracting process & oversight and hands on assistance as needed. Each small DBE firm would have their own contract for the scope of work they are licensed and experienced to perform. This would remove some risk many prime have with using new small DBE enter public sector work and help increase more opportunities for smaller DBE to get experience & learn the public sector contracting process.

*** Third concern** DBE application form certification & personal net worth statement.
- KMBCA general thought is use reasonable review to determine if applicant is disadvantaged. Allow for a fair appeal process for any person requesting DBE status that not approved. Concerning personal net statement again use reasonable test in reviewing asset holding, allow DBE to benefit in program before growing out due to their net worth of all assets in household.

Page 2 DBE Public Comment by KMBCA*** Fourth concern Program Oversight**

- KMBCA general believe their need to be more and better oversight at all level federal, state and local agencies that receive federal transportation dollars for their projects. These agencies contract and DBE program manager show a lack of committed to the DBE goals being met only with getting the federal dollar to do their projects & not concern if prime contractors use any DBE. I strongly believe DBE program manager & contract officer & agencies receiving funds should lose something with they repeatedly miss their projects DBE goals. Start with a warning than take way some of their funding or annual wage increase. If they have something at risk they will be more concern in seeing that their projects DBE goal is met by prime contractor who general follow their lead. I have been dealing with DBE/MBE/WBE issue since 1982 I speak from first hand experience.

*** Fifth concern facilitating interstate certification DBE working in more than one state.**

- KMBCA supports all effort underway for to have a DOT UCP process that helps make it easier for DBE to do business interstate & cut down the amount of paperwork to do business. One suggestion if a DBE has a current certification from one state it be excepted in any state unless a complaint is raise then local can request addition items to determine if a recertification is needed.

*** Sixth concern limits discretion of prime contractors to terminate DBE for convenience.**

- KMBCA do not support any effort to make it easier to replace listed DBE subcontractor by prime contractors without good cause some action cause by the DBE subcontractor. Its is recommendation that any listed DBE subcontractor do not be allow to be replace by some other DBE on the projects & that the listed DBE be allow the complete the full dollar value of their sub bid and any addition work do to change order in DBE scope of job they be given first option on do the work they can meet unit price cost.